

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 11-CR-623(JG)

: U.S. Courthouse

: Brooklyn, New York

-against- : TRANSCRIPT OF

: SENTENCING

AGRON HASBAJRAMI, : August 13, 2015

Defendant : 3:00 p.m.

X
BEFORE: HONORABLE JOHN GLEESON, U.S.D.J.

APPEARANCES:

For the Government: KELLY T. CURRIE, ESQ.
Acting United States Attorney
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Brooklyn, New York 11201
BY: SETH DuCHARME, ESQ.
SARITHA KOMATIREDDY, ESQ.
PETER BALDWIN, ESQ.
Assistant U.S. Attorneys

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MICHAEL BACHRACH, ESQ.

Probation Officer: Frank Marcagliano

Albanian Interpreter: Dominique Marin

Court Reporter: Hollis Driscoll, CSR
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Proceedings recorded by mechanical stenography, transcript produced by Computer-Assisted Transcript.

1 THE CLERK: United States versus Agron Hasbajrami.

2 THE COURT: Please have a seat in the back, thank
3 you. Sorry to keep you waiting.

4 THE CLERK: Counsel, please come forward.

5 THE COURT: State your appearances please.

6 MR. DuCHARME: For the United States, Seth DuCharme,
7 Your Honor, I'm joined by Saritha Komatireddy and Peter
8 Baldwin.

9 MS. KOMATIREDDY: Good afternoon, Your Honor.

10 MR. BALDWIN: Good afternoon, Your Honor.

11 THE COURT: Good afternoon.

12 MR. DRATEL: Good afternoon, Your Honor, Joshua
13 Dratel for Mr. Hasbajrami. I'm joined by Michael Bachrach,
14 and Steve Zissou and Hanna Antonsson are here as well.

15 THE COURT: Good afternoon. Once again, I apologize
16 for keeping you all waiting.

17 Ilene, could you please swear the interpreter.

18 (Interpreter sworn by the clerk.)

19 THE CLERK: Please state your name for the record.

20 THE INTERPRETER: Dominique Marini, Albanian
21 interpreter. Good afternoon, Your Honor.

22 THE COURT: Good afternoon.

23 There's a presentence report that we had seen long
24 ago before the first sentencing and an addendum to it dated
25 July 30th, 2015, and a third addendum. Mr. Dratel, you've

1 seen these documents?

2 MR. DRATEL: Yes, I have, Your Honor.

3 THE COURT: You've been over them with your client?

4 MR. DRATEL: Yes.

5 THE COURT: Is that right, Mr. Hasbajrami?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: You've had enough time to go over them
8 with your lawyers?

9 THE DEFENDANT: Yeah, I have.

10 THE COURT: Any objection to them?

11 MR. DRATEL: No. I think Your Honor corrected or
12 amended the original presentence report at the time of the
13 original sentencing so, in that context, we have no further
14 objections.

15 THE COURT: All right. And we have an advisory
16 range that far exceeds the statutory maximum, correct?

17 MR. DRATEL: Correct, and, Your Honor, we would ask
18 for access to the recommendation please.

19 THE COURT: Yes, granted.

20 PROBATION OFFICER: I have copies, Your Honor.

21 THE COURT: Let me know when you're done.

22 (Pause.)

23 MR. DRATEL: Thank you, Your Honor.

24 THE COURT: All right. How about from the
25 government, any objection to the presentence report or the

1 addenda?

2 MR. DuCHARME: No, Your Honor.

3 THE COURT: Okay. I wanted to say briefly my
4 reasons why I denied the motion to withdraw the plea of guilty
5 that we resolved earlier this week. If the factual
6 allegations set forth in Mr. Hasbajrami's letter that prompted
7 our last appearance were true, I would grant the motion
8 because it would inextricably lead to the conclusion that his
9 plea was not voluntary as it must be, but as our last
10 appearance made clear, there's a factual issue with regard to
11 that question based on the representations made to me by
12 Mr. Zissou and Mr. Bachrach and I thought whether or not an
13 evidentiary hearing ought to be required, I don't think one
14 was needed on the constellation of facts that were before me,
15 I don't think a bare dispute in the version of events such as
16 the one that came up necessarily requires one. If I'm wrong
17 about that, an appellate court will let me know.

18 I struggled long and hard since then over whether
19 Mr. Hasbajrami's version of events could be reconciled with
20 his attorneys' based on a language problem or based on just in
21 the crucible of making an important decision like the one that
22 he made he might have misperceived a strident session of
23 advice or sessions of advice in which counsel expressed the
24 view that he should plead guilty, that might have been
25 mistaken for the kind of coercion that's asserted in this

1 July 16th letter. I think Mr. Zissou suggested it might have
2 been the product of a misunderstanding. I can't bring myself
3 to conclude that. The allegations here are pretty strong and,
4 at bottom, are allegations of egregious misbehavior by counsel
5 that, as I say, I do not credit and I don't feel I need an
6 evidentiary hearing in order to come to that result. So,
7 that's why I denied the motion to withdraw the plea.

8 Mr. Dratel, do you want to be heard with regard to
9 the appropriate sentence?

10 MR. DRATEL: Yes, Your Honor, thank you. And we've
11 submitted our papers so I'm not going to go over them, I'm
12 just going to touch on a couple of things that I think are
13 important with respect to that and that is that as we are here
14 now essentially three years after the initial sentence,
15 nothing has changed with respect to the sentence being
16 reasonable and it was reasonable then and the same sentence is
17 reasonable now and under the statute and the interpretation by
18 the Second Circuit and application by the Second Circuit as
19 well as constitutional issues, that there is no basis for a
20 higher sentence, that those statutory and constitutional
21 obstacles do apply here and that absent that, you know,
22 obviously we asked for, and when I say "we," obviously I was
23 not involved at the time but I say that on behalf of my
24 colleagues as well who were, asked for a five year sentence
25 initially, we still think obviously that less than fifteen is

1 appropriate and that the five years is sufficient but not
2 greater than necessary, but understanding what the Court
3 sentenced and the Court's remarks back at the initial
4 sentencing, obviously our position is that the Court has
5 determined that a fifteen year sentence was reasonable and it
6 remains reasonable because nothing has changed to the extent
7 that would be material enough to justify altering it.

8 And, again, as we note from Dorvee, the case from
9 the Second Circuit, that even if there's a different sentence
10 that's reasonable, the lower sentence that's reasonable is the
11 one that must be imposed, and I think the constitutional
12 underpinning of that is part of what we put in our papers with
13 respect to North Carolina v. Pearce also applies.

14 I think that in the context of how we got here in
15 this deal is important as well because I think the Court's
16 suggestion as to how to resolve the case of going back to the
17 original deal is, again, a recognition that that would be a
18 reasonable sentence and so I think that, based on all that,
19 that would be the fair sentence, the reasonable sentence and
20 the appropriate sentence and certainly the highest sentence
21 that would be appropriate in that regard.

22 Again, we're back here not because Mr. Hasbajrami
23 did anything other than learn that the government had withheld
24 information and so, in effect, it would be rewarding the
25 government and punishing Mr. Hasbajrami for something that was

1 solely exclusively the government's fault and I think that
2 would be unfair as well.

3 I think that with respect to the motion, and I would
4 note that I understand the Court's position and the Court
5 obviously is looking at it from its independent perspective,
6 but I would just note that Mr. Zissou last week expressed the
7 opinion that this was the result of a misperception and I also
8 think, having been closer to the situation at the time that
9 the plea was entered, that it's also a product of the anxiety
10 that Mr. Hasbajrami still has about whether he can trust the
11 government, whether there's going to be something else that's
12 going to occur that's going to affect the integrity of the
13 prosecution that at some point because he's waived his right
14 to appeal everything but a sentence over fifteen and, you
15 know, the 702 issue, that somehow he doesn't have recourse and
16 despite the fact that if something new were to occur, we
17 believe that it would not impair his ability to challenge it,
18 I'm not sure that he has absorbed that totally or is convinced
19 of that and he's not unjustifiably distrusting of the
20 situation.

21 And I think to a certain extent, and maybe this is
22 counsel's fault, but the plea allocution also went a little
23 beyond where we had anticipated and so I think that also threw
24 him in the sense that there would be more things that were
25 going to happen that he couldn't be prepared for and he

1 wouldn't be able to address or confront in a legal manner.

2 So, again, as we put in our papers, no where in that
3 motion -- I should say that in the motion it says he confessed
4 already, he just wants to do his time, I think he's prepared
5 to do that, I think that shouldn't affect anything with
6 respect to the sentencing.

7 The only thing that perhaps has differed is that
8 he's had a good adjustment while incarcerated. He has availed
9 himself of programs. Even at MDC during the period of time
10 he's been there since he's come back he's been part of the
11 Focus Forward program and I tried to get in touch with someone
12 there but it was not a correct e-mail address that I was given
13 so it bounced back to me, I was going to try to consult with
14 someone who has been a teacher there with Mr. Hasbajrami but I
15 was unsuccessful in doing that.

16 Yesterday the Court sentenced someone to twenty-two
17 years with a maximum of thirty, I believe that there were two
18 fifteen years counts, Mr. Babfemi, and just looking at the --
19 it probably comes from the Justice Department press release,
20 it's a far more serious case there and I would think that just
21 given the conduct and the intended conduct that was involved
22 in that case as to what that defendant did, really the gulf is
23 considerable and, again, in the context of proportionality and
24 disparity and all of that, that makes a fifteen year sentence
25 even more appropriate here in the context of comparison of

1 those defendants, of Mr. Hasbajrami and that defendant. And I
2 think that even absent that, but I just think for all those
3 reasons that the Court should reimpose the fifteen year term.
4 If we had the initial deal, that would be what it was. If
5 that was the Court's suggestion that the Court was -- when the
6 Court denied the 702 motion, that the government should just
7 reimpose the deal with the conditional plea; so, again, I
8 think that's a recognition that that still is a reasonable
9 sentence and if that's the reasonable sentence, that's the
10 reasonable sentence.

11 Thank you, Your Honor.

12 THE COURT: Thank you.

13 I might have asked this at the outset but I'll ask
14 it now, are you still satisfied with the representation you're
15 receiving from Mr. Dratel?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Okay. Because you expressed that at our
18 last appearance and because Mr. Dratel himself told me he
19 didn't feel in any way conflicted, I've refrained from any
20 kind of Curcio type of proceeding here that I might have
21 conducted had Mr. Zissou or Mr. Bachrach been the principal
22 counsel.

23 I still think that's the right way to proceed. You
24 disagree, Mr. DuCharme?

25 MR. DUCHARME: No, Your Honor.

1 THE COURT: And I neglected, because it wasn't in my
2 hand when I spoke earlier, to provide the authority I found
3 helpful in connection with denying the application to withdraw
4 the guilty plea: United States versus Diaz, 176 F.3d 52 at
5 114, it's a 1999 case, instructs that there need be no
6 evidentiary hearing when a defendant's claim that he was
7 threatened into pleading guilty found no support in the record
8 and was contradicted by his plea allocution. I also found
9 United States versus Gonzalez, 970 F.2d at 1100, instructive.

10 You have a right to speak before you're resentenced,
11 Mr. Hasbajrami, is there anything you'd like to say?

12 THE DEFENDANT: No, Your Honor, thank you.

13 THE COURT: All right.

14 MR. DRATEL: He'll rely on obviously his initial
15 remarks back at the initial sentencing.

16 THE COURT: Of course.

17 Mr. DuCharme.

18 MR. DUCHARME: Briefly, your Honor, I will respond
19 to a few things that Mr. Dratel said. I think Your Honor
20 understands from our submission and the course of this case
21 the relevant facts that pertain to this sentencing but I want
22 to make sure, Judge. Our position is that we are now where we
23 ought to be. It's been a bit of a winding road to get here
24 surely but we are now ready to have this defendant sentenced
25 for the offense conduct having, frankly, fully litigated some

1 important legal issues and having the benefit, frankly, of the
2 ability to reflect on the initial events of this case, Judge.
3 And I know that you know that prosecutors like judges have to
4 make difficult decisions and in 2011 when this defendant came
5 to our attention, we were in a brisk counter-terrorism
6 landscape and, frankly, that landscape has only become more
7 challenging for us and so we considered then the opportunity
8 to resolve the case for what we thought was a reasonable
9 sentence that would provide adequate deterrence and disruption
10 and would, of equal importance to us, allow us to redirect our
11 attention to other terrorist threats understanding that the
12 burdens of these types of cases, the way we do them, through
13 no fault of anyone else's frankly, is very challenging for us
14 and so we struck a bargain that we thought was a fair one.

15 Since then, based largely on Your Honor's remarks at
16 sentencing, I have second-guessed that decision. The Court
17 spoke and we listened and it is unusual that you have the
18 benefit of a judge's strong remarks at sentencing in a case
19 and then get a chance to do it over. And so, we have
20 reflected upon whether or not that initial fifteen year cap
21 was sufficient to meet the ends of justice and to protect the
22 public and to deter future like conduct and all of the other
23 3553(a) factors.

24 So, having no longer received the benefit of the
25 initial bargain that we struck, in other words, we did fully

1 litigate these complicated issues and make, frankly, no
2 complaints about that, they are issues that ought to be
3 litigated I think and will provide certainty or a greater
4 degree of certainty and predictability in an important
5 developing area of law, but that said, we lost the benefit of
6 our bargain, we took our partners offline and we took
7 ourselves offline and we focused on this and then we reflected
8 on Your Honor's remarks and we looked again at the offense
9 conduct which, frankly, has not changed and we said, well, now
10 we've got a chance to do this again and what ought we to do
11 and we said we ought to give the sentencing judge more
12 discretion to impose a higher sentence.

13 And I think, Judge, reflecting on the offense
14 conduct, that a sentence higher than fifteen years would be
15 among the range of reasonable sentences and I'm very conscious
16 of the arguments that I made previously to urge the Court to
17 accept the deal that we made but I'm equally conscious of the
18 fact that we now have the benefit to look at those facts anew
19 and serve the interests of justice. And so, that's where we
20 find ourselves today. Our position is that it is a serious
21 offense, as I know you know it is, and that the agreement that
22 both sides entered into now permits the Court to impose a
23 greater sentence to serve the ends of justice.

24 With respect to a couple of specific comments that
25 Mr. Dratel made, I think that Pearce and the Smith case that

1 also addresses vindictiveness in sentencing, I think those
2 cases really are distinguishable here. I don't think there's
3 an aura of vindictiveness on the part of the Court. I think
4 quite the contrary, you've always, frankly, encouraged us to
5 litigate these issues and to hit these issues head-on and to
6 preserve these issues for the Second Circuit. So, I don't
7 think there's a really fair inference to be drawn that were
8 you to sentence Mr. Hasbajrami to a higher sentence, it would
9 be punishing him for exercising his legal rights and I think
10 Pearce and Smith, for the reasons stated in the facts of those
11 opinions, really are distinguishable. They are cases in very
12 different postures.

13 With respect to comparing Mr. Babafemi to
14 Mr. Hasbajrami, the defendants are different, they both
15 committed serious offenses. I was here for the sentencing
16 yesterday. Ms. Hoyes pointed out that while some of
17 Mr. Babafemi's conduct was especially egregious, on the other
18 hand, he had not enjoyed the benefits that America affords
19 Americans and legal permanent residents, and Mr. Hasbajrami
20 has, frankly. So, they both committed very serious offenses,
21 I think you have to look at them as different cases, I think
22 they are very different cases.

23 I'm not going to remind you of all of the
24 aggravating facts or incriminating facts of the case. I think
25 the case is a relatively straightforward factual case. I

1 think you're aware of why it is a serious offense so I don't
2 intend to repeat those things. I'm confident that the Court
3 knows the relevant facts.

4 I've seen our duty in this case is to hit these
5 complicated legal issues head-on and give you the discretion
6 to impose sentence that you told me you did not previously
7 have and we heard you.

8 THE COURT: Thank you.

9 Anything further from you or your client?

10 MR. DRATEL: Yes, Your Honor. Just with respect to,
11 first, the government still hasn't addressed the Dorvee
12 principle which is if there are two reasonable sentences, you
13 have to go with the lower one. And they still haven't -- they
14 talked about Pearce, they did not talk about Dorvee and they
15 didn't talk about Dorvee in their letter either because there
16 really is no answer for that.

17 The second part is the government did get the
18 benefit of its bargain, they got a guilty plea, they got a
19 sentence. We're back in the same position. Because they did
20 not comport themselves properly in the previous proceeding,
21 they don't get that -- if you think of the message that that
22 would be sending, that the government can sit back, make a
23 deal, then, oh, the only thing -- they don't lose anything by
24 doing that, they gain, they get a higher sentence. And the
25 second guessing part to me, I'm sorry, that's hollow. When

1 the Court -- I have never had a case in 35 years where the
2 Court asked for an explanation as to why a plea -- a 6(b)
3 presentation, I've never had one. That to me is
4 extraordinary. That indicated from the get-go that the Court
5 had a serious question about what the government was doing and
6 the government wrote that letter in full cognizance that the
7 Court given the opportunity and given the discretion could
8 have and was considering a higher sentence. That's the whole
9 purpose of that. There's no other basis for the 6(b) and the
10 Court said it on the record.

11 So, the government, they can't say now, oh, the
12 letter didn't mean anything, we didn't consider that really
13 seriously, we didn't look at that carefully enough. They did.
14 They're bound by that. It's unfair and the Court said it
15 itself when you made the suggestion, when you said it on the
16 record here in court. So, I just think that all those things
17 compel the same sentence that the Court imposed.

18 THE COURT: Okay, thanks.

19 Well, it is certainly an odd configuration of
20 circumstances, right, there's a charge bargain and I asked for
21 justification for it. Maybe the fact that makes this
22 combination of circumstances most odd is the combination of my
23 deference to the charge bargain, because I think I need to
24 defer, but my express statement that but for the deference, I
25 thought a higher sentence would be more appropriate. You

1 know, in a way what I did by deferring to that charge bargain
2 last time was impose a sentence that I basically said was
3 insufficient.

4 MR. DRATEL: But reasonable.

5 THE COURT: Right. You don't have to be a
6 cheerleader, you've had your piece, you said it, I've listened
7 to you.

8 MR. DRATEL: Okay.

9 THE COURT: The upshot of what I'm about to say
10 essentially moots this interesting argument about
11 vindictiveness and the government affording me in this second
12 plea bargain more discretion. There's no begrudging the
13 government for what it did, it listened. Would that it always
14 listens so carefully to judges generally and to me. It
15 listened. I have no doubt that the principles relating to
16 vindictive sentences do not preclude me from imposing a
17 sentence of twenty years, no doubt in my mind about that. I'm
18 going to impose a sentence of sixteen years, just so you know
19 the punch line, and let me explain to you why I've gotten
20 there.

21 It just strikes me even though, as I said, I have no
22 doubt that I'm empowered to impose the greater sentence that I
23 suggested was appropriate the last time around, I just don't
24 think it is fair, that's why I suggested that you extend the
25 same bargain after I denied the motion to suppress. Fair is

1 fair. He got that deal.

2 Another factor that makes this such an odd
3 combination of circumstances is he moved to withdraw the plea
4 based on a very important fact that had not been disclosed to
5 him prior to that previous sentence. So, it's kind of tough
6 to, in my view unfair, separate and apart from what sentence I
7 would have imposed had I not been constricted by the charge
8 bargain the first time around, it doesn't seem fair to me to
9 penalize his motion to withdraw the plea and his unsuccessful
10 motion to suppress by a higher sentence.

11 As I've already indicated though, I can't bring
12 myself to conclude that this recent motion to withdraw the
13 plea is anything other than just a flat out false statement
14 made to me in connection with an effort to withdraw the plea.
15 These statements here are fundamentally irreconcilable with
16 statements I credited when Mr. Hasbajrami pled guilty the
17 second time. The notion that he was pleading voluntarily
18 notwithstanding this subsequently asserted fact that his
19 lawyer told him that if he went to trial, he would say that
20 he's guilty, it's preposterous. I don't believe it. It is a
21 lie to me. And the additional year that I'm imposing for this
22 crime, more about the crime in a minute, stems solely from
23 that. It suggests to me a -- it's obviously an effort to
24 mislead the Court with a false statement, erodes any
25 acceptance of responsibility, deserves to be punished. He's

1 being punished. The last year of your sentence you can chalk
2 up to that statement, Mr. Hasbajrami.

3 This is a serious crime, we've been over this
4 before. I agree this defendant is less culpable than the one
5 everybody mentioned who I sentenced yesterday. It doesn't
6 alter the fact that there's a serious degree of culpability
7 that attends contributing money to and then attempting to
8 offer one's services to a terrorist organization. That's why
9 he's being punished. Sixteen years is serious punishment.

10 So, that's the sentence, sixteen years in the
11 custody of the Attorney General, and I mean to impose the same
12 other features of the sentence that I imposed the first time
13 around. As soon as I find the judgment, I'll tell you what
14 they are.

15 Do you have those before you, Frank?

16 PROBATION OFFICER: I don't, Your Honor.

17 THE COURT: Hand them up or tell me what they are.

18 PROBATION OFFICER: I don't have the --

19 THE COURT: Anybody have a copy of the judgment?

20 MR. DRATEL: No, Your Honor.

21 MR. DuCHARME: I think we have a transcript.

22 THE COURT: I've got it.

23 So, it's 192 months of incarceration. Oh, there was
24 no supervised release imposed the last time. You agree that's
25 the way we ought to handle it this time around as well?

1 PROBATION OFFICER: Yes, Your Honor.

2 THE COURT: \$100 special assessment, no fine. I
3 think that's it.

4 MR. DuCHARME: Judge, I have something else to hand
5 up; you may recall that in connection with the plea, the
6 defendant agreed to the entry of an order of judicial removal
7 and notice was provided. I'm handing to your courtroom deputy
8 that order and the supporting documents.

9 (Clerk confers with the Court.)

10 THE COURT: Oh, it is two counts.

11 PROBATION OFFICER: Judge, it would be \$200 special
12 assessment.

13 THE COURT: Yes, on each of the two counts. I take
14 it 192 months is within the statutory maximum of both counts
15 of conviction?

16 MR. DuCHARME: One is a zero to fifteen, the other
17 is a zero to five.

18 THE COURT: So, which one is One and which one is
19 Two?

20 MR. DuCHARME: One is zero to fifteen and Two is
21 zero to five.

22 THE COURT: So, it is fifteen years, 180 months on
23 Count One, 12 months on Count Two to run consecutive to one
24 another. \$100 on each count in assessments, they have to be
25 aggregated, so it is \$200 in assessments.

1 You've seen this order of judicial removal?

2 MR. DRATEL: Yes, Your Honor.

3 THE COURT: Any reason I shouldn't sign it?

4 MR. DRATEL: No, Your Honor.

5 THE COURT: Is there a place of incarceration you
6 want me to recommend to BOP?

7 MR. DRATEL: Yes, Your Honor, Terre Haute, Indiana.

8 THE COURT: Granted.

9 MR. DRATEL: Thank you, Your Honor.

10 THE COURT: What else, if anything?

11 MR. DRATEL: There's one other item, with respect to
12 going forward given the Court's --

13 THE COURT: Oh, hold on. You've got a right to
14 appeal. I think you have an unencumbered right to appeal now,
15 right?

16 MR. DuCHARME: He has a right to appeal the sentence
17 because it was in excess of fifteen years and his right to
18 appeal the Court's denial of the motion to suppress the fruits
19 of the FAA.

20 THE COURT: You have the issue that was the subject
21 of the conditional plea of guilty, the denial of the motion to
22 suppress that Mr. DuCharme just mentioned, plus you have a
23 right to appeal the sentence I've just imposed. If you want
24 to do that, you've got to file a notice within ten days in
25 this courthouse -- 14 days.

1 MR. DRATEL: 14 now.

2 THE COURT: 14 days or you lose your right to
3 appeal. If you can't afford a lawyer to represent you, one
4 will be appointed for you just as these lawyers were appointed
5 for you here. Mr. Dratel will go over all of this with you.

6 It strikes me in this case that continuity of
7 counsel on appeal is critical so make sure you file the notice
8 on behalf of your client.

9 MR. DRATEL: Certainly, Your Honor.

10 THE COURT: Yes.

11 MR. DuCHARME: There are open counts and underlying
12 indictments which we move to dismiss.

13 THE COURT: Granted.

14 MR. DRATEL: One other thing which is about
15 continuity of counsel and I've discussed this with
16 Mr. Hasbajrami, I don't know -- you know, I'm not going to
17 speak for him but I asked him that given the Court's order
18 and the ECF entry with respect to last week's proceedings,
19 with respect to Mr. Bachrach that if he would be, if
20 Mr. Hasbajrami would be willing to continue Mr. Bachrach on
21 the appeal as well given his familiarity with the motion and
22 our ability to do the appeal efficiently in less time if we
23 can work on it together and I think it is important to get it
24 done as quickly as we can given the importance of the issue to
25 Mr. Hasbajrami.

1 THE COURT: Well, my legitimate interest in this is
2 dissipating very quickly but if I were sitting up there in the
3 Court of Appeals, the last thing I would want on the roster of
4 appointed counsel on this appeal is a lawyer who in the second
5 to last appearance in the District Court had a flatly at odds
6 factual version of events on something really important with
7 respect to Hasbajrami. So, you're going to file the notice.
8 These counsel have not been relieved but I do want you to
9 sensitize the Court of Appeals to this issue.

10 MR. DRATEL: We'll do something formal in the sense
11 of either an affirmation from Mr. Hasbajrami, if he's willing
12 to do it or not, and then to do something that --

13 THE COURT: Something --

14 MR. DRATEL: Yes. No, no, I understand, Your Honor.

15 THE COURT: I'd want to do some kind of Curcio
16 waiver.

17 MR. DRATEL: And that's why I raised it here because
18 I didn't want it to just be floating out there.

19 THE COURT: Yes. And don't let it just stay below
20 the radar up there, you owe it to them, I owe it to them to
21 direct you to bring it to their attention promptly.

22 MR. DRATEL: Thank you.

23 THE COURT: What else?

24 MR. DuCHARME: Anxiously looking forward to your
25 opinion, Judge.

23

1 THE COURT: On what subject?

2 MR. DuCHARME: The -- I think you know.

3 THE COURT: Have a good day.

4 MR. DuCHARME: Thank you, Your Honor.

5 (Time noted: 3:40 p.m.)

6 (End of proceedings.)

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